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5 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**  
6 **OF THE STATE OF CALIFORNIA**  
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8 In the Matter of the Application of:

9 **Y.V.**

**Precedent Decision No. 04-01**

10 Application No: 664425

11 **Introduction**

12 A hearing on this application was held on October 14, 2003, in Bakersfield, California, by  
13 Richard P. Fisher, Hearing Officer, California Victim Compensation and Government Claims Board  
14 (Board). Applicant Y.V. appeared at the hearing and testified under oath. Witness A.P. also appeared  
15 at the hearing and testified under oath. Y.V.'s representative, N.L., Deputy Probation Officer with the  
16 Kern County Victim Assistance Program, also appeared at the hearing and served as an interpreter for  
17 Y.V., whose native language is Spanish.

18 **Procedural Background**

19 The application for compensation under the Victim Compensation Program (program) is based  
20 on a battery upon Y.V. on July 19, 2001. The application was received on August 6, 2001<sup>1</sup>, and Y.V.  
21 was found to be eligible for program compensation. To date, Y.V. has received \$7,211.84 in  
22 compensation for medical expenses and \$37.00 in compensation for mental health counseling expenses.

23 The current appeal concerns Y.V.'s request for additional compensation for chiropractic  
24 treatments. The chiropractic bills were recommended for denial because Board staff could not establish  
25 any basis for concluding these expenses were crime-related. The denial recommendation was timely  
26 appealed.

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29 <sup>1</sup> Because the application was filed before the effective date of the current statute, Statutes 2002, chapter 1141 (Senate Bill 1423 Chesbro), all references are to the Government Code sections in effect on or before December 31, 2002.

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Is Y.V.'s application for additional compensation supported by a preponderance of the evidence that her ongoing chiropractic expenses are medically necessary as a direct result of the qualifying crime?

## Findings of Fact

According to the crime report, on July 19, 2001, Y.V. was in the parking lot of her employer when she was approached by two female co-workers with whom she had had previous verbal disputes. The two women began to physically batter Y.V. causing her injuries to her head, neck and back. Y.V. was transported to the Kern Medical Center by ambulance. The nature of the dispute between Y.V. and her co-workers was never determined.

Y.V. was determined to be the victim of a qualifying crime and to date has been compensated \$7,248.84 for medical and mental health counseling expenses. Board staff has paid over \$5,000 in chiropractic expenses for services performed by chiropractor, Dr. S., for services rendered between September 6, 2001, and December 4, 2002. Additional chiropractic expenses based on Dr. S.'s services were submitted for services rendered between December 13, 2002, and February 6, 2003. Board staff recommended the denial of these additional expenses because they had occurred more than six months after the date of the qualifying crime and they did not appear to be necessary as a directly result of the qualifying crime. One factor that had given Board staff concern was that approximately one year earlier on October 15, 2001, Dr. S. had written to the Board and stated, "Y.V. will require future medical care of chiropractic adjustments three times a week for 12 weeks and one-half hour of therapeutic massage two times a week for four weeks." Therefore, taking Dr. S.'s prediction of future care for Y.V. based on the qualifying crime, Board staff reasoned that Y.V.'s crime-related chiropractic care would have expired on or about December 15, 2001.

Notwithstanding Dr. S.'s letter of October 15, 2001, Board staff continued to pay for Dr. S.'s chiropractic services through December 4, 2002. Therefore, the medical expenses at issue in the current appeal concern chiropractic services performed by Dr. S. that *began* one year beyond the date that Dr. S. herself had opined that Y.V.'s need for chiropractic care would cease. It is pertinent to note also that both Dr. S. and Y.V. were notified by Board staff in writing that additional chiropractic treatment would not be compensated for any dates of service after December 4, 2002. Notwithstanding this prior

1 notification, Y.V. continued to receive treatment from Dr. S. from December 13, 2002, through  
2 February 6, 2003.

3 Dr. S. also submitted a progress report to Board staff on November 27, 2002. In that report,  
4 Dr. S. notes that Y.V. is currently scheduled for chiropractic care at an interval of once per week.  
5 Significantly, Dr. S. wrote that, "No work limitations are in force at this time for [Y.V.] but caution is  
6 recommended." Therefore, in Dr. S.'s opinion as of November 27, 2002, Y.V. was not experiencing any  
7 physical symptoms that would limit her working in any way. Dr. S. also submitted a letter to the Board  
8 dated October 13, 2003. In that letter, Dr. S. states that Y.V.'s quality of life and health have been  
9 severely altered by the injuries she sustained during the qualifying crime on July 19, 2001. However,  
10 Dr. S. does not limit Y.V. with respect to her work activities nor does Dr. S. suggest that Y.V. has been  
11 rendered permanently or temporarily disabled as a result of the qualifying crime. There is no evidence  
12 in any of Dr. S.'s progress reports or letters that would explain the need for ongoing chiropractic care,  
13 especially in light of Dr. S.'s October 2001 opinion that Y.V. would need chiropractic treatment but  
14 only until approximately December 15, 2001.

15 During the hearing, Y.V. testified that she has been experiencing pain to her neck and back ever  
16 since the date of the qualifying crime and that the chiropractic care and treatment she receives from  
17 Dr. S. is very helpful to her. Y.V. further stated that it is difficult for her to work full-time as a  
18 housekeeper in the manner that she was accustomed to working prior to the qualifying crime. A.P. also  
19 testified during the hearing. She is a longtime friend of Y.V. and testified that Y.V. has experienced a  
20 great reduction in vigor and strength ever since the qualifying crime and she is, in A.P.'s opinion, not  
21 able to perform at the same level of functioning that she was prior to the crime. A.P. further testified  
22 that Y.V. had been a worker in her home for many years and she could see the difference in her  
23 performance before and after the crime.

24 Based on the testimony of Y.V. during the hearing, the testimony of A.P. during the hearing, and  
25 on the documentary evidence contained in the Board's file, substantial evidence supports each of the  
26 following findings of fact:

- 27 1. Y.V. injured her head, neck and back during the qualifying crime on July 19, 2001.
- 28 2. Y.V. has received chiropractic care for over one year from the date of the qualifying crime.

3. On October 15, 2001, Dr. S. opined that Y.V. would need no more than twelve additional weeks of chiropractic care based directly on the effects of the qualifying crime. Dr. S. continued to treat Y.V. for an additional year until Board staff notified her and Y.V. that chiropractic services would no longer be compensated beyond December 4, 2002.
4. Notwithstanding Board staff's notification that the Board would not compensation for chiropractic treatment beyond December 4, 2002, Dr. S. continued to treat Y.V. for her chiropractic needs between December 13, 2002, and February 6, 2003.
5. Dr. S.'s final report dated February 6, 2003, states that Y.V. does not have any work restrictions based on her medical condition.

### **Determination of Issues**

The Board shall approve an application for assistance if a preponderance of the evidence shows that as a direct result of a crime the victim incurred an injury that resulted in a pecuniary loss. (Gov. Code, § 13964(a).) Because Y.V. was previously found to be eligible for program compensation, the only issue for determination is whether her continuing chiropractic expenses were incurred as a direct result of the qualifying crime. Y.V. has the burden of proving by a preponderance of the evidence that her ongoing chiropractic expenses are a direct result of the qualifying crime. (Gov. Code, § 13964(a); Cal. Code Regs., tit. 2, § 647.32.<sup>2</sup>)

Here, Y.V. has failed to provide sufficient medical evidence that her ongoing chiropractic care is necessary as a direct result of the qualifying crime. Y.V. produced no credible medical evidence that would explain the need to continue her chiropractic care beyond December 2001, pursuant to the letter from Dr. S. dated October 15, 2001. Although Dr. S., in her written correspondence to the Board, and Y.V. and A.P. testified that they believed chiropractic care would benefit Y.V., the fact remains that there is insufficient medical evidence that would support a finding that the ongoing chiropractic care was necessitated as a direct result of the qualifying crime. (Gov. Code, § 13964(a).)

Historically, the Board has compensated victims of qualifying crimes for chiropractic treatment for up to six months of treatment. The Board has allowed for extensions of the six-month

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<sup>2</sup> All citations to regulations are to Title 2 of the California Code of Regulations.

1 period if rare or extenuating circumstances have been found to exist. Here, based on letters received  
2 from  
3 Dr. S., Board staff accurately and properly determined that Y.V.'s circumstances did not rise to the  
4 level of "rare and extenuating" circumstances. As noted in Finding of Fact No. 5, Dr. S. at no time  
5 imposed work limitations on Y.V. based on her physical condition. In addition, both Dr. S. and Y.V.  
6 were notified in writing by Board staff that the Board would not pay for further chiropractic treatment  
7 beyond December 4, 2002. It was therefore incumbent upon Dr. S. and Y.V. to produce sufficient  
8 medical evidence that the ongoing chiropractic treatment was necessary as a direct result of the  
9 qualifying crime. Based on Finding of Fact Nos. 3, 4 and 5, it is determined that Dr. S.'s progress  
10 notes and/or letters are not sufficient evidence that the ongoing treatments are medically necessary as  
11 a direct result of the qualifying crime.

12 Although Y.V.'s and A.P.'s testimony was sincere on the point that the chiropractic treatments  
13 appear to be helpful to Y.V., that testimony is not in the form of medical evidence but rather states the  
14 opinion that chiropractic treatment appears to be helping Y.V. The Board statutes and regulations  
15 require more, however, than lay opinions concerning the benefits of chiropractic treatment.  
16 Applicants requesting compensation for chiropractic treatment reimbursement must prove by a  
17 preponderance of the evidence that the treatment is medically *necessary* as a direct result of the  
18 qualifying crime. Here, Y.V. and Dr. S. have failed to produce sufficient evidence to meet that  
19 burden. It is therefore determined that Y.V. has failed to meet her burden of proof that the ongoing  
20 chiropractic care resulted as a direct result of the qualifying crime. (Gov. Code, § 13964(a), Reg.,  
21 647.32.)  
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### 23 **Order**

24 Y.V.'s application for additional compensation for chiropractic care is denied.  
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5 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**  
6 **OF THE STATE OF CALIFORNIA**  
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8 In the Matter of the Application of:

9 **Y.V.**

**Notice of Decision**

10 Application No: 664425  
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12 On February 27, 2004, the California Victim Compensation and Government Claims Board  
13 adopted the attached Decision as a Precedent.  
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16 Date: February \_\_\_\_\_, 2004

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18 JUDITH A. KOPEC  
19 Interim Chief Counsel  
20 California Victim Compensation and  
21 Government Claims Board  
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